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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,264	01/16/2001	Michael E. Tompkins	BALIN-56314	9250

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EXAMINER

MEKY, MOUSTAFA M

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/761,264

**Applicant(s)**

TOMPKINS ET AL.

**Examiner**

Moustafa M Meky

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 35-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The response filed 3/29/2004 has been entered and considered by the examiner.
2. Claims 35-58 are presenting for examination.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 35-37, 39-49 & 51-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Pryor (US Pat. No. 4,398,789).
5. As to claim 35, Pryor shows in Fig 1, a control system for a water spa (whirlpool tub 1) intended to remain substantially continuously filled between uses. The system of Pryor comprising:
  - \* an electrical power source (represented by the two arrows coming from the power source to feed the electric coil 40 of the heater) for providing energy;
  - \* a system interconnection panel including the microcomputer 7 and a step-down power supply (see col 3, lines 52-54); and
  - \* a plurality of electronic components such as the sensors 30-32 and electrical components such as the motor 19 and an electronic panel 2 capable of displaying alphanumeric characters calculated by the microcomputer 7, see the abstract, lines 24-29, col 2, lines 8-11, col 3, lines 25-29, lines 44-46, lines 51-54, lines 67-68.

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6. As to claim 36, Pryor shows the use low voltage to provide energy to sensors and LEDs, see col 3, lines 51-54.

7. As to claim 37, the system of Pryor is used outdoor, see col 3, lines 55-59.

8. As to claims 39-40, one of the electrical components is an resistive element 40 to heat the water in the spa (see col 3, lines 47-50), and another element is a pump 18, see Fig 1.

9. As to claim 41, the system of Pryor comprises an electronic circuitry associated with the microcomputer 7 to convert analog signals into alphanumeric characters, see col 3, lines 44-46, lines 51-54.

10. As to claims 42-43, the system of Pryor further includes a temperature sensor that produces a signal proportional to the temperature of the water in the spa and water flow sensor that produces a signal indicative of presence of water flow, see col 3, lines 44-46, lines 51-54, lines 61-63, lines 67-68. Also, see col 2, lines 33-37.

11. As to claims 44-46, the microcomputer converts the electronic signals from the sensors and displaying alphanumeric characters on the panel 2, see col 3, lines 44-46, lines 51-54, lines 67-68.

12. As to claims 47-49 & 51-58, the claims are similar in scope to claims 35-37 & 39-46, and they are rejected under the same rationale.

Therefore, it can be seen from paragraphs 5-12 that Pryor anticipates claims 35-37, 39-49 & 51-58.

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13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 38 & 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pryor (US Pat. No. 4,398,789).

15. As to claim 38, Pryor shows in Fig 1, a control system for a water spa (whirlpool tub 1) intended to remain substantially continuously filled between uses as been discussed in paragraph 5 above. Pryor does not teach the use of GFCI for protection purpose. The use of GFCI was known to provide protection against power surge. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a GFCI between the power source and the panel in order to protect the panel from any power surge.

16. As to claim 50, the claim is similar in scope to claim 38, and it is rejected under the same rationale.

Therefore, it can be seen from paragraphs 15-16 that the modified system of Pryor teaches the limitations of claims 38 & 50.

17.A. The applicant argues in his remarks the following:

- 1) The system of Pryor is not intended to remain substantially continuously filled;
- 2) Pryor does not teach a system panel including a step-down supply.

17.B. In response to the above arguments:

- As to 1, first, there is no limitations in the core of claims 35 & 47 to reflect the preamble. Second, the system of Pryor teaches the claimed preamble, see col 2, lines 33-35, col 3, lines 44-46, lines 61-63 (notice controlling the flow and the level of the water);
- As to 2, Pryor teaches the use of a panel including a step-down supply, see col 3, lines 51-54 (notice the use of low voltage LED which means the use of step-down supply to lower down the supply voltage to a low voltage).

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Moustafa M. Meky whose telephone number is (703)

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305-9697. The examiner can normally be reached on week days from 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne, can be reached on (703) 308-7562. The fax phone number for this Group is (703) 308-9052.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600. The fax number for the After-Final correspondence/amendment is (703) 746-7238. The fax number for official correspondence/amendment is (703) 746-7239. The fax number for Non-official draft correspondence/amendment is (703) 746-7240. M.M.M

June 15, 2004

  
MOUSTAFA M. MEKY  
PRIMARY EXAMINER